

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL B. DOMBACH,	:	CIVIL ACTION
Plaintiff,	:	
	:	NO. 98-1652
v.	:	
	:	
ALLSTATE INSURANCE COMPANY,	:	
Defendant.	:	

MEMORANDUM

BUCKWALTER, J.

October 7, 1998

For purposes of explaining my ruling on plaintiff's Motion to Compel

(Docket No. 11), a recital of portions of plaintiff's complaint follows:

6. On May 24, 1996, Mr. Dombach was driving his 1994 Dodge Van in an eastward direction on West Penn Grant Road in Pequea Township, Lancaster County, Pennsylvania when a Ford Taurus containing three small children but no driver rolled out of a downward sloping driveway and onto the road in front of Mr. Dombach's vehicle, causing a collision. The owner of the Taurus, Christine Costarella, had left her children in the car unattended. Costarella's negligent and reckless conduct was the sole cause of the accident.

7. At the time of the accident, Costarella's vehicle was uninsured.

8. As a result of the accident, Mr. Dombach sustained a complete tear of the left rotator cuff resulting in severely restricted range of motion. Mr. Dombach's treating physician, Dr. Gary Zartman, determined that Mr. Dombach's injuries were caused by the auto accident.

9. At the time of the accident, Mr. Dombach was an insured of Allstate under a policy providing uninsured motorists (UM) coverage in the amount of \$100,000 per person.

10. Allstate paid Mr. Dombach's medical bills under the first party medical benefits portion of his policy, and never questioned the reasonableness or necessity of those bills, or the causal relationship between the injury and the accident.

11. Because Mr. Dombach initially attempted to resolve his UM claim without the assistance of counsel, his claim was assigned to claims adjuster Patricia Hickey, who handled claims of unrepresented Allstate insureds. In January, 1997, Mr. Dombach placed three telephone calls to Allstate claims adjuster Patricia Hickey, none of which were returned.

12. On January 30, 1997, Mr. Dombach placed a fourth call to Ms. Hickey, which she did return, but told him that she would have to call him back on February 3, 1997. Ms. Hickey did not call back on February 3, however, and on February 18, 1997, Mr. Dombach placed another call to Ms. Hickey.

13. Between February 18 and February 20, 1997, Ms. Hickey made a settlement offer in the amount of only \$10,000, and Mr. Dombach proceeded to retain counsel.

14. On February 20, 1997, Mr. Dombach's counsel, Loura Selfe, sent a letter of representation to Ms. Hickey, informing Ms. Hickey that she intended to obtain Mr. Dombach's medical records and provide a complete settlement package for Allstate's evaluation.

15. Upon receiving notice that Mr. Dombach was represented by counsel, Allstate transferred the file to another adjuster, Patricia DiCello, who handled claims of insureds represented by counsel. On March 3, 1997, Ms. DiCello advised Ms. Selfe that she had assumed the handling of Mr. Dombach's claim.

16. On June 3, 1997, Ms. Selfe sent Ms. DiCello a settlement package containing all of Mr. Dombach's medical records as well as an arthrogram showing a complete rotator cuff tear, and made a demand of \$100,000 to settle Mr. Dombach's claim.

17. On July 2, 1997, Ms. DiCello informed Ms. Selfe that Allstate did not intend to increase its offer of \$10,000, and Ms. Selfe made a demand for arbitration on behalf of Mr. Dombach.

18. By letter of July 7, 1997, Ms. Selfe identified James Hagelgans as Mr. Dombach's arbitrator.

19. On July 29, 1997, Allstate's counsel, John J. McNally, III, asked Ms. Selfe to provide him with the name of Mr. Dombach's arbitrator, despite the fact that Ms. Selfe had already identified Mr. Dombach's arbitrator in her letter of July 7, 1997.

20. By letter of July 31, 1997, Ms. Selfe again informed Mr. McNally of the identity of Mr. Dombach's arbitrator, explained that Mr. Dombach wished to proceed to arbitration as quickly as possible, and asked Mr. McNally to provide dates on which he would be available to take Mr. Dombach's statement under oath. By August 20, 1997, Mr. Dombach's statement under oath had been scheduled for September 18.

21. By letter of September 5, 1997, the neutral arbitrator requested that the parties agree on a date for the arbitration and stressed that he did not want to have to reschedule the arbitration because of delays caused by videotape depositions. During October, 1997, the arbitration was scheduled for December 18, 1997.

22. At Mr. Dombach's statement under oath on September 18, 1997, Mr. McNally informed Ms. Selfe that he wanted an IME of Mr. Dombach. As of October 10, 1997, Mr. McNally still had not attempted to schedule an IME, and Ms. Selfe asked him to do so as soon as possible so that she could schedule the deposition of Mr. Dombach's treating physician, Dr. Zartman.

23. On November 3, 1997, Ms. Selfe reminded Mr. McNally that the arbitration was only three weeks away, and asked that he let her know immediately if he intended to get an IME, because she wanted to be sure to have the IME report before taking Dr. Zartman's deposition. On November 12, 1997, Mr. McNally finally informed Ms. Selfe that he was not going to have an IME performed. Allstate, however, did not increase its settlement offer.

24. Also on November 3, Mr. McNally told Ms. Selfe that he would not be attending Dr. Zartman's deposition, but that another attorney from his office, Karen Durkin, would attend. On the afternoon of Friday, November 21, 1997, however, despite the neutral arbitrator's admonition regarding delays of the arbitration, an employee of Mr. McNally's office informed Ms. Selfe that neither Mr. McNally nor Ms. Durkin could attend Dr. Zartman's deposition scheduled for the following Monday at 12:30 p.m.

25. By letter of November 21, Ms. Selfe advised Mr. McNally that the deposition would proceed, and that he could send someone else or participate by telephone if necessary. Ms. Durkin attended the deposition in person.

26. On December 16, 1997, Ms. Selfe advised Mr. McNally that she would be presenting the testimony of Mr. Dombach's wife, his son or daughter, and his physical therapist. Ms. Selfe provided Mr. McNally with a copy of a newspaper article regarding a golf tournament that Mr. Dombach had won before the accident, and informed him that she would be introducing the article and several trophies at the arbitration. Allstate still did not increase its settlement offer.

27. The arbitration was held on December 18, 1997. The arbitrators advised counsel later that day that they had awarded \$57,500. According to the neutral arbitrator, Allstate's arbitrator had valued the case at "\$30,000-40,000, and certainly no more than \$50,000," and plaintiff's arbitrator had valued the case at \$95,000.

28. On December 23, 1997, because of Mr. Dombach's immediate financial needs, Ms. Selfe asked Mr. McNally to fax her a release as soon as possible in order to expedite payment, even though the arbitrators were still circulating the award for their signatures. By December 29, 1997, Mr. McNally sent the release and a check in the amount of the award.

29. On December 30, Ms. Selfe informed Mr. McNally that she intended to modify the release to exclude claims for first party medical benefits, medical malpractice, and insurance bad faith, and asked whether he had any objection to these modifications. By telephone, Mr. McNally responded that he objected only to the exclusion for bad faith claims, but that he would discuss this with his contact at Allstate and get back to Ms. Selfe the next day. Mr. McNally also admitted that he had been concerned about the possibility of bad faith, and that he had believed the case to be worth about \$25,000, the amount for which he was authorized to settle it at the time of arbitration. Mr. McNally had made no such offer at the time of arbitration.

30. In a separate letter of December 30, 1997, Ms. Selfe confirmed Mr. McNally's promise to check with Allstate and get back to her, stating that she would not distribute the check until she heard from him, and that Allstate would be acting in bad faith if it were to insist on a general release.

31. Mr. McNally responded with a letter of December 31, 1997, in which he denied that Allstate had acted in bad faith. Mr. McNally stated that he believed that Allstate's offer of \$10,000 was based on Mr. Dombach's "prior health history, the nature of the injury, the fact that no wage claim was made, and the fact that Mr. Dombach recovered with few restrictions after a sporadic course of conservative treatment." Despite these contentions by Mr. McNally, Allstate had chosen not to obtain an IME for the arbitration. Mr. McNally also stated in his letter of December 31 that Allstate would accept the modifications to the release.

32. Also on December 31, 1997, Ms. Selfe responded to Mr. McNally's letter of the same date by recounting the full substance of their telephone conversation of December 30, 1997. In response, by letter of January 8, 1998, McNally denied that he had authority to offer \$25,000 at the time of arbitration, and stated that \$25,000 was "what I believed to be the maximum value of the case if you were able to establish causation, which we disputed in light of the degenerative nature of this injury and Mr. Dombach's history of arthritis." Despite these contentions by Mr. McNally, Allstate had chosen not to obtain an IME for the arbitration.

33. Throughout the pendency of Mr. Dombach's claim, Allstate never increased its offer of \$10,000.

34. At all times relevant to this action, Allstate had a corporate policy of training and encouraging its claims personnel to pay as little as possible as late as possible on the claims of its insureds in order to reduce the amount of the average paid claim and maximize claims profit.

35. At all times relevant to this action, Allstate had a corporate policy of trying cases brought by its insureds that it otherwise would have settled in order to reduce the amount of the average paid claim (a.k.a. “severity”) and discourage insureds from attempting to recover the full value of their claims.

36. At all times relevant to this action, Allstate provided incentives to its attorneys to try cases that they otherwise would have settled.

37. At all times relevant to this action, Allstate utilized computer software systems, including, but not limited to, a system known as “Colossus,” to evaluate or assist in the evaluation of the claims of its insureds. These systems were designed not to fairly evaluate each insured’s claim, but to reduce the amount of the average paid claim.

Distilled from the rather lengthy complaint is a fairly straight forward and simple bad faith claim; namely, that Allstate acted in bad faith by offering only \$10,000 in settlement.

A recovery for bad faith requires clear and convincing evidence of bad faith, rather than mere insinuation. It requires a showing by the insured that (1) the insurer did not have a reasonable basis for denying coverage under the policy and that (2) the insurer knew of or recklessly disregarded its lack of a reasonable basis in denying the claim. MGA Insurance Company v. Bakos, ___ Pa. Super. ___, 699 A.2d 751 (1997), citing Terletsky v. Prudential Property and Casualty Ins. Co., 437 Pa. Super. 108, 649 A.2d 680 (1994). See also Keinger v. State Farm Mut. Auto Ins. Co., 115 F.3d 230 (3rd Cir. 1997).

To help prove those elements of his claim, plaintiff has sought a wide range of information from defendant. Broken down in specific areas, plaintiff seeks through his motion to compel the following:

OTHER BAD FAITH CASES

15. Identify by court, term, caption and number all bad faith cases other than the present one that have been filed against Defendant in Pennsylvania at any time since July 1, 1990, and identify and produce copies of all complaints (original and amended) that have been filed in those cases.

16. Identify and produce all complaints alleging a claim of bad faith that have been filed against Defendant in any court outside Pennsylvania.

17. Identify (by court and caption) all cases in which a punitive damage verdict has been returned against Defendant in or outside Pennsylvania, and for each such verdict, state the date that it was returned, whether it was paid (and if so when), and if no, why not?

18. Identify all claims for bad faith that Defendant has settled at any time, and the dollar amount that Defendant has paid in each such settlement.

19. State whether Defendant has ever made a change in its claims handling procedures or instructions as a result of, or in response to, a verdict against it for bad faith or a settlement of a bad faith claim. If so, identify and explain the change, including when it was made, and identify and produce all documents that refer or relate to each such change.

20. State whether Defendant has ever reprimanded, criticized or sanctioned an employee or agent whose conduct has been at issue in a bad faith case in which a verdict has been returned against Defendant or Defendant has paid a settlement, and if so, identify (for purposes of a deposition) the person(s) at Allstate who have the most knowledge of such reprimands, criticism or sanctions.

21. State whether Defendant has at any time monitored, through any one person or group of persons, or in any one centralized file, claims that have been made against it or its employees for bad faith. If the answer to this is yes, identify all monitoring efforts that Defendant has used, state the period of time that each has been used, identify the person(s) who are in charge of each, and identify and produce all documents that refer or relate to each such monitoring efforts.

PERSONNEL FILES

7. For all persons who played any part in handling, reviewing or adjusting Plaintiff's claim identified in response to the preceding interrogatory, identify and produce the complete personnel files, including without limitation: Employee Salary Review forms; Progress Development summaries; Performance Review forms; Prescription History reports (education and training records); and Severity goals and reports.

BONUSES AND INCENTIVES

12. Identify all bonus or incentive compensation programs provided to claims personnel (including adjustors and superiors) or attorney at any time during the past five years, describe how any monetary or nonmonetary rewards under each such program are determined, and produce all documents that refer or relate to these programs and rewards.

CLAIMS MANUALS AND INSTRUCTIONAL MATERIALS

9. Identify and produce all instructional materials and manuals that Defendant has given to its claims personnel at any time in the last five (5) years including without limitation: CPPP (Claim Policy, Practices & Procedures) manual; Allstate Auto Policy manual; CCPR (Claim Core Process Redesign) training manual; "CCPR: Waves of Change" videotape; CCPR Focus Group videotape; CDS (Claim Development Summary) manual; Human Resources Policy Statements manual; MIS (Management Information Systems) manual; Operations manual; Formal Claim Handling criteria and instructions; extra-contractual liability training brochures and treatises; loss control initiatives; Unrepresented Training Pack (including exhibits); UM Training Pack (including exhibits); Casualty Best Practices Guide; materials relating to the handling of "M.I.S.T." ("minor impact soft tissue") cases; and OASYS menu and manual.

NEWSLETTERS AND ADVERTISEMENTS

11. Identify and produce copies of all newsletters that have been distributed to Defendant's claims personnel over the past three (3) years.

13. Identify and produce copies of all print and television advertisements that Defendant has used in the last five (5) years in Pennsylvania, including without limitation: Allstate Service Pledge; Brochure C2896 ("Important Things You Should Know in Case of a Loss"); and OASYS contact letters.

COMPUTER SOFTWARE SYSTEMS

22. Identify all computer software systems that Defendant has used in the adjustment or evaluation of claims during the past five years, identify (for purposes of a deposition) the person(s) at Allstate who have the best knowledge of these, and produce all related documents, including without limitation: Colossus Manual; Colossus Enhancement by Allstate Manual; and Colossus Training Module.

23. Identify and produce all reports or research on claims handling, including without limitation: Attorney Representation Focus Group studies; CCPR telephone surveys; and CCPR closed file surveys.

24. Identify (for purposes of depositions) all members of the CCPR implementation team for the area in which Plaintiff's claim was handled.

PIP CLAIM FILE

25. Identify and produce the entire PIP file of Paul B. Dombach regarding his motor vehicle accident or May 24, 1996.

IN CAMERA REQUESTS

A. To review the unredacted claim file to determine whether Allstate has withheld discoverable materials.

8. If Defendant had outside attorneys or firms work on Plaintiff's claim, identify all such attorneys and firms, and identify and produce the complete file of all such attorneys and law firm(s) on Plaintiff's claim. This includes all bills, statements of time and time logs submitted to Defendant by all such attorneys and firms.

Not surprisingly, defendant feels that the discovery requests are too broad.

According to defendant, plaintiff has cited no cases interpreting Pennsylvania's bad faith statute to permit broad discovery of other cases and nationwide practices and policies.

Defendant quotes the following from an opinion of Chief Judge Cahn:

What constitutes a reasonable set of business practices for the investigation and evaluation of claims is a question properly left to the Pennsylvania Insurance Commissioner, not a judge or a jury. The bad faith statute addresses only whether insurers acted recklessly or with ill will in a particular case, not whether its business practices are reasonable in general.

Hyde Athletic Industries, Inc. v. Continental Cas. Co., 969 F.Supp. 289, 307 (E.D. Pa. 1997) (emphasis added).

By following this reasoning, plaintiff feels that defendant "is attempting to put plaintiff's case 'in a shoe box' by drawing the court's attention away from Allstate's conduct and focusing instead on the conduct of the individual claims adjusters."

I might observe metaphorically that if defendant is indeed trying to put plaintiff's case in a shoe box, then plaintiff is trying through his discovery requests to put it in the hold of a large trans-Atlantic cargo carrying ship. Neither container is representative of the approach to discovery contemplated under federal rules.

With regard to overbroad discovery, Judge VanArtsdalen of this court made this observation:

Where counsel, as here, makes an **obviously overbroad** request for documents, I do not think it is the responsibility of the trial judge to redefine and redraft the request. Counsel should tailor its requests to meet proper discovery needs that will be useful in the preparation for the trial of the issues in litigation.

Transamerica Commercial Finance Corporation v. Arch Associates Corp., 1992 WL 38317 (E.D.Pa.).

Plaintiff's discovery approach is obviously overbroad. Based on the complaint, discovery should be aimed at disclosing whether defendant in this particular case (1) did not have a reasonable basis for offering \$10,000; and (2) knew or recklessly disregarded its lack of a reasonable basis.

The present motion to compel will be denied in its entirety with one exception: The in camera request regarding the claims file will be granted as hereafter set forth.

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PAUL B. DOMBACH,	:	CIVIL ACTION
Plaintiff,	:	
	:	NO. 98-1652
v.	:	
	:	
ALLSTATE INSURANCE COMPANY,	:	
Defendant.	:	

ORDER

AND NOW, this 7th day of October, 1998, it is hereby ORDERED that plaintiff's Motion to Compel (Docket No. 11) is DENIED, except defendant shall within fifteen (15) days submit the entire claims file, in unredacted form and in the redacted form which it gave to plaintiff, for in camera review.

BY THE COURT:

RONALD L. BUCKWALTER, J.